IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. [redacted] 34

TIMES FILM CORPORATION,
Petitioner,

vs.

CITY OF CHICAGO, ET AL.,
Respondents.

MOTION FOR LEAVE TO FILE ATTACHED BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE.

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this and other courts involving freedom of communication and the problem of motion picture censorship in particular. The definitive state court interpretation of the ordinance involved in this case resulted from litigation commenced by movant as party plaintiff. See *American Civil Liberties Union* v. *City of Chicago*, 3 Ill. 2d 133 (1954), *appeal dismissed for want of a final judgment*, 348 U. S. 979 (1955), later decision, 13 Ill. App. 2d 278 (1957). The instant case is considered by movant to be the most important case involving governmental censorship since *Near* v. *Minnesota*, 383 U. S. 697 (1931).

2. The central issue in this case is whether or not the Constitution permits states or municipalities to impose restraints on motion pictures which would clearly not be permissible if imposed on other media of communication. The answer to this question must be sought, at least in part, in the historical context out of which grew the freedom of communication guaranteed by the First and Fourteenth Amendments. Movant's brief seeks to relate this historical context to the issues in this case.

3. The presentation in movants' brief does not repeat the material contained in petitioner's brief.

Respectfully submitted,

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IN THE

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OCTOBER TERM, 1939.

No. 689.

TIMES FILM CORPORATION,
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vs.

CITY OF CHICAGO, ET AL.,
Respondents.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE.

INTEREST OF AMICUS.

The American Civil Liberties Union is dedicated to the preservation and advancement of the basic liberties of a free society. Amicus believes that the censorship ordinance attacked in this case unconstitutionally limits freedom of expression in an important medium of communication.

The sole issue to which this brief is addressed is the validity under the First and Fourteenth Amendments to the United States Constitution of those provisions of Chapter 155 of the Municipal Code of Chicago[1] which require the issuance of a permit from the Commissioner of Police prior to the exhibition within the City of any motion picture. Section 4 of the ordinance instructs the commissioner that

1. The full text of the relevant sections of the ordinance is set forth in Appendix A to this brief.

> "Such permit shall be granted only after the motion picture film for which said permit is requested has been produced at the office of the commissioner of police for examination or censorship."

After examination of the submitted motion picture, the commissioner is required to refuse a permit if the motion picture

> "is immoral or obscene, or portrays depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching or burning of a human being • • •."

The City of Chicago has thus subjected motion pictures to a type of censorship system,[2] traditionally abhorrent to a free people. No motion picture may be shown within the City unless the censor, after viewing the film, determines, in an *ex parte* proceeding, that its contents are suitable for viewing by the public.

The American Civil Liberties Union, as *amicus curiae*, does not, in this proceeding, challenge the right of the City of Chicago to punish the publication of motion pictures, books, newspapers, periodicals, or any other form of communication the contents of which violate legally acceptable standards. It does challenge the power of the City, or any other

2. "In a strict sense censorship is the term applied to the operations of a person authorized to intervene between a producer of publishable material and the consumers to whom he offers that material and to prohibit either the producer from publishing or the consumer from • • • acquiring knowledge of whatever part of such material the censor deems unsuitable." 6 *Encyclopedia Americana* 193a (1956).

"Official censorship systems for motion pictures, requiring advance approval before a film can be shown, represent what is probably the closest approach in America today to the English licensing laws of the seventeenth century • • •. Obviously, censorship in this field is prior restraint in its classical form." Emerson, *The Doctrine of Prior Restraint*, 20 *Law and Contemporary Problems* 648 at 667 (1955).

governmental body subject to the limitations imposed by the First or Fourteenth Amendments, to enact a law requiring the advance submission of motion pictures (or any other form of communication) to a censor empowered to prevent publication if the submitted material is deemed objectionable.

Although this Court has never directly passed upon the constitutionality of motion picture censorship, its decisions in closely related areas combine with history to make clear that no state or municipality may, consistently with the Fourteenth Amendment, interpose a censor between the public and those who would communicate with it.

ARGUMENT.

I. HISTORY SHOWS THAT CENSORSHIP SYSTEMS ARE FORBIDDEN BY THE FIRST AND FOURTEENTH AMENDMENTS.

As early as 1275 Parliament outlawed "any false news or tales whereby discord or occasion of discord or slander may grow between the king or his people or the great men of the realm, * * *" but it was not until the invention of printing that a general censorship law was put into effect. See Levy, *Legacy of Suppression* 7-8 (Cambridge, 1960). The relationship between the advent of printing and the emergence of censorship was, of course, not coincidental.

> "* * * Governments at first thought it absolutely necessary to appoint a censor, in order to watch over the beginning of all writings and permit such only to be published as he should think proper. This notion was founded on the simple faith that books were like gunpowder or poison, which if once made, the mischief might be irreparable." Paterson, *Liberty of the Press, Speech & Public Worship,* 50 (London, 1880).

Because of the seemingly dangerous potential of the printing press, founded upon the far from unreasonable belief that the printed word might work more mischief than the spoken or written word,[3] censorship prevailed in England

3. "The Moralists observe, that there is a natural Bashfulness, in the most flagitious Sinners, which restrains 'em generally from talking (before modest people especially) the worst Things they think.

"Whereas a Printed Book never blushes, nor the Author, if his name be not to it, but, like a Boy that hath flung a Cracker out of a Garrett Window, Pops in his head, and laughs only at the Conceit of what Mischief it may do."

Arguments Relating to a Restraint Upon the Press, fully and fairly handled in a Letter to a Bencher from a Young Gentleman of the Temple (London, printed for R. & F. Bonwicke at Red Lion Inn, St. Paul's Churchyard, 1712).

for more than one hundred fifty years. In America also, licensing of printing presses, including a ban upon publication prior to submission to and approval by a censor, was common. See Levy, *Legacy of Suppression, supra,* 8-49.

By 1694, however, sentiment had turned so strongly against censorship that Parliament refused to renew the licensing law which expired that year. See 4 Blackstone's Commentaries 152, note a (7th Ed., 1775). And, within the next thirty years, censorship passed also from the American scene. See Levy, *Legacy of Suppression, supra,* 18-87.

With the advancement of liberal thought during the eighteenth century, freedom from censorship was widely hailed as the fundamental and necessary condition of a free press. Blackstone wrote that:

> "The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press • • • to subject the press to the restrictive power of a licenser, as was formerly done, both before and since the revolutions, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government. But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus the will of individuals is still left free • • •. And to this we may add, that the only plausible argument heretofore used for restraining the just freedom of the press, 'that it was necessary, to prevent the daily abuse of it,' will entirely lose its force,

> when it is shown (by a reasonable exertion of the laws) that the press cannot be abused to any bad purpose, without incurring a suitable punishment: whereas it can never be used to any good one, when under the control of an inspector." *Op. cit. supra*, at 151-53.

See also the comments of Lord Mansfield, in *Woodfall's Case*, 20 Howell's State Trials 903, 911 (1770).

It would unduly lengthen this brief to refer to the abundant evidence available to show that Blackstone's views were known and shared in the colonies. See Levy, *Legacy of Suppression*, *supra*, 18-87. Typical of the colonists' views, however, is that expressed in the charge of Chief Justice Hutchinson of Massachusetts in a prosecution for seditious libel during the year 1767:

> "The Liberty of the Press is doubtless a very great Blessing; but this liberty means no more than a Freedom for every Thing to pass from the Press without License—That is, you shall not be obliged to obtain a license from any Authority before the Emission of Things from the Press." *Id.* at 68.

That these views were shared by the members of the First Congress and the state legislatures which adopted the First Amendment seems hardly open to question. In the context of the times it is inconceivable that the words "Congress shall make no law • • • abridging the freedom • • • of the press. • • •" could have meant anything less than that Congress was to be absolutely prohibited from establishing a system of censorship. See *Near* v. *Minnesota*, 283 U. S. 697 (1931); *Patterson* v. *Colorado*, 205 U. S. 454, 462 (1907); 1 Official Opinions of the Attorneys General of the United States 72 (Hall, Ed.; Washington, 1852).

The present case, of course, does not arise under the First Amendment, but under the Fourteenth. Nevertheless, whether or not the free speech and press guarantees of the First Amendment are incorporated in the Fourteenth,

cf. *Elkins* v. *United States*, 80 S. Ct. 1437 (1960); *Kingsley Pictures Corp.* v. *Regents*, 360 U. S. 684 (1959), the historical context in which the American conception of freedom was developed is peculiarly relevant to any inquiry as to the scope of the Fourteenth Amendment. As Chief Justice Hughes said:

> "Liberty, in each of its phases, has its historical connotation and, in the present instance, the inquiry is as to the historic conception of the liberty of the press and whether the statute under review violates the essential attributes of that liberty. * * *
>
> "The question is whether a statute authorizing such proceedings in restraint of publication is consistent with the conception of the liberty of the press as historically conceived and guaranteed. In determining the extent of the constitutional protection, it has been generally, if not universally, considered that it is the chief purpose of the guaranty to prevent previous restraints upon publication." *Near* v. *Minnesota, supra*, at 708, 713.

Since its decision in *Near*, this Court has handed down numerous decisions recognizing and applying, in a variety of contexts, the Fourteenth Amendment's prohibition against censorship.[4] In no case has it sanctioned exercise by the state of a power which may fairly be deemed the equivalent of that of the censor. Only recently, in *Kingsley Books, Inc.* v. *Brown*, 354 U. S. 436, 437 (1957), the Court, in upholding a New York statute authorizing "a limited injunctive remedy" against obscene books *subsequent to*

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4. See *Grosjean* v. *American Press Co.*, 297 U. S. 233 (1936); *Lovell* v. *City of Griffin*, 303 U. S. 444 (1938); *Hague* v. *C.I.O.*, 307 U. S. 496 (1939); *Schneider* v. *State*, 308 U. S. 147 (1939); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1939); *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1942); *Winters* v. *New York*, 333 U. S. 507 (1946); *Niemotko* v. *Maryland*, 340 U. S. 268 (1951); *Kunz* v. *New York*, 340 U. S. 290 (1951).

their publication, was careful to point out that its decision was "confined so as to preclude what may fairly be deemed licensing or censorship." Id. at 441.

II. MOTION PICTURES ARE PROTECTED AGAINST CENSORSHIP TO THE SAME EXTENT AS OTHER MEDIA OF COMMUNICATION.

In *Burstyn* v. *Wilson,* 343 U. S. 495, 502 (1952), this Court squarely held that

> "expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments."

For the reasons stated above it would appear that the Chicago censorship ordinance is invalid, for it subjects a protected means of communication, motion pictures, to the heavy hand of the censor.

It has been suggested, however, that motion pictures create problems not presented by other media of communication, problems which were not, and could not have been foreseen by the framers, and that, for this reason, legislative controls may be exercised with respect to motion pictures which would be patently invalid if applied to older means of communication. See, e.g., *Joseph Burstyn, Inc.* v. *Wilson,* 303 N. Y. 242, 261, 101 N. E. 2d 665, 674 (1951). These arguments were noted by this Court in *Burstyn* v. *Wilson, supra,* at 502 with the comment that any unique problems posed by motion pictures might "be relevant in determining the permissible scope of community control * * *." There are, of course, subjects possible to imagine which may be described inoffensively by the printed word which would be offensive if displayed upon the motion picture screen. The differences between motion pictures and the older media of communication do not, however, justify subjecting the former to a system of

control which for three centuries has been generally condemned as obnoxious to free men.

Ultimately, all arguments which seek to justify motion picture censorship rest upon the premise that motion pictures have a greater "capacity for evil" than do the older media of communication. The argument is hardly a novel one. It was, as we have seen, precisely this justification which was given for the censorship of the press during the sixteenth and seventeenth centuries. Then, as now, it was urged that problems were presented by the newer medium of communication which made it more dangerous to a well ordered society than the older media had been. The plain fact, however, is that every medium of communication is dangerous. To be sure, speech, printed matter, motion pictures, indeed all forms of communication may be used for evil purposes. Nonetheless, the type of censorship involved in this case is at war with the fundamental guarantees of freedom which have been incorporated into our Constitution.

The sum of the arguments for censorship is no different now than it was three hundred years ago—that a system of prior restraint is the most efficient means available for the suppression of objectionable matter. But history reveals that this nation, without equivocation, chose long ago to forego such means in order to assure full opportunity for lawful expression. Madison pointed out long ago that,

> "Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits." Quoted in *Near* v. *Minnesota,* 283 U. S. 691, 718 (1931).

Only by ignoring that history as it is written into our Constitution can the validity of the Chicago ordinance be sustained.

III. THE TYPE OF CENSORSHIP SYSTEM INVOLVED IN THIS CASE IMPOSES A SUBSTANTIAL RESTRAINT ON PROTECTED EXPRESSION.

If the passage of three centuries has not altered the arguments of the proponents of censorship, neither has it weakened the force of the objections to censorship—objections which have been expressed at least since the time of Milton and which were well known to the Founders of this nation.

The spirit which underlies the Constitution recognizes that sound procedure is essential to a free nation.[5] Yet, in a society devoted to freedom of thought and expression, censorship is, as the Founders were aware, the most dangerous of procedures. The inevitable consequence of a system of censorship is to impose serious restraints upon the exhibition of constitutionally protected motion pictures. The function which the motion picture censor performs, the pressures to which he is subject, and the procedures under which he operates all militate against the full and free exchange of views which the First and Fourteenth Amendments seek to promote. They lead to the exclusion of any motion picture which may be objectionable either to the censor or to the myriad of pressure groups whose influence is felt in this area. See Emerson, *The Doctrine of Prior Restraint*, 30 Law & Contemporary Problems, 648, 656-660 (1955), *supra*.

Subsequent restraints such as criminal prosecutions or the "limited injunctive remedy, under closely defined procedural safeguards," upheld in *Kingsley Books, Inc.* v. *Brown*, *supra*, 354 U. S. 436, are aimed with selectivity

5. See *McNabb* v. *U. S.*, 318 U. S. 332, 347 (1943).

at arguably unlawful matter.[6] Only those motion pictures which are the subject of complaint or otherwise come to the attention of the prosecutor are subjected to governmental scrutiny. A system of censorship, in contrast, lumps together the unlawful and the constitutionally protected, and subjects both to procedures alien to our law and designed more for suppression than for promotion of the great debate so essential to our society.

It is not merely the character or ability of those who would serve as censor which leads to the absurd results reached under the Chicago ordinance, see note 10 *infra*, although Milton made clear long ago that it was hardly to be expected that censors would be of the character and ability demanded by their task:

> "If he [the censor] be of such worth as behooves him, there cannot be a more tedious and unpleasing journey-work, a greater loss of time levied upon his head, than to be made the perpetual reader of unchosen books and pamphlets * * * we may easily foresee what kind of licenser we are to expect hereafter, either ignorant, imperious, and remiss or basely pecuniary." *Areopagitica, in the Complete Poetry and Selected Prose of John Milton,* 677 at 700 (Modern Library Ed. 1950).

Personal qualifications aside, the tendency of the censor to be overcautious, to prohibit the exhibition of anything which might arouse controversy is inherent in the office which he occupies. This danger also was recognized long ago:

> "though a licenser should happen to be judicious more than the ordinary, which will be a great jeopardy of the next succession, yet his very office enjoins him to let nothing pass but what is vulgarly received already." Id., at 703.

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6. See opinion of Judge Fuld in Court below, 1 N. Y. 2d 177, 185-6 (1956).

The function of a censor, after all, is to suppress. Absent any matter to suppress, the need for the office disappears. The nature of the office, moreover, subjects it to pressures from those who have created it—not those who, closer to our constitutional tradition, believe in unfettered expression, but those who believe that there are subjects which ought not to be before the public.

Dangers to free expression to some extent inhere in any system designed to control the dissemination of ideas even after they are expressed. But they are particularly intensified in a system of prior censorship. By a stroke of the pen the licenser may deny the right of exhibition. Only at the price of initiating extensive and time-consuming litigation may the motion picture producer or exhibitor challange the censor's decree. The burden is thus placed upon the citizen to go forward and justify his right to be heard, rather than, as in the case of criminal prosecutions, upon the government to establish that reasons exist which are sufficiently compelling to require proscription.

Important also are the procedural safeguards present in judicial proceedings to punish or restrain which are totally absent in "proceedings" before the censor. If freedom of expression is to be placed on trial, it is at least, as Blackstone suggested, *supra,* p. 5, entitled to one that is fair and impartial. Yet, for the reasons discussed above, the nature of the censor's office invites arbitrary decisions. Any decision as to the lawfulness of the motion picture is made not by a jury familiar with community standards and less subject to the influence of particular pressure groups, nor by a judge trained in our constitutional ideals but by one whose *raison d'etre* is to suppress.

Unlike the procedures in a courtroom during a criminal or injunctive proceeding, those of the censor serve only to increase the risk of an irresponsible decision. The censor, unaffected by the presumption of innocence, unhampered

by the rules of evidence, and not subject to the discipline of having to justify his decisions, tends to become a law unto himself. There is, moreover, no opportunity for the applicant or anyone on his behalf to present any evidence bearing upon the factual questions determinative of whether or not the motion picture is constitutionally protected.[7] Cf. *Smith* v. *California*, 361 U. S., 147, 160, 169 (1959), concurring opinions of Mr. Justice Frankfurter and Mr. Justice Harlan. The censor thus determines in a vacuum what is appropriate for the public to hear and to see. The standards applied, consequently, must of necessity tend to be the personal standards of the censor or some pressure group, rather than those which this Court has held permissible. For these reasons, as Blackstone pointed out long ago, "(T)o subject the press to the restrictive power of licenser * * * is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government." *Supra*, pp. 152-3.

Experience under the Chicago ordinance more than adequately demonstrates the wisdom of the framers in forbidding censorship. The petition for the writ of certiorari in this case discloses that in the years between the decision of the Court in *Burstyn* v. *Wilson, supra,* and the filing of the petition not once has the City been upheld by

7. The absence of any such opportunity under the Chicago ordinance involved here appears in the record before this Court in earlier litigation between the parties to the present proceeding. *Times Film Corporation* v. *City of Chicago*, 355 U. S. 35 (1957), Transcript of Record, p. 51, Oct. Term 1957, No. 372. (Trans. of Rec. in Ct. of App., p. 51). The record in that case, consisting largely of testimony of those who administer the ordinance, constitutes an invaluable study of the actual operation of the Chicago ordinance over a number of years, including testimony as to qualifications of the censors, the "standards" which they apply in reaching their decisions, and the procedures which they employ. It speaks more eloquently than could any brief of the dangers of censorship to a free society.

the Courts in its refusal to grant a permit for the exhibition of a motion picture.[8]

The absurdities to which the system leads are exemplified by a recent case under which the City refused a permit for the exhibition of the motion picture "Anatomy of a Murder" based upon the best-selling novel of the same title, because it found the use of the words "rape" and "contraceptive" to be objectionable. *Columbia Pictures Corp.* v. *City of Chicago*, N. D. Ill., 59 C 1058 (1959) (unreported).[9] Other examples of the inability of the Chicago censors[10]

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8. Petition, Appendix C, pp. 13a-14a. The cases are: *American Civil Liberties Union* v. *City of Chicago*, 13 Ill. App. 2d 278 (1957); *Times Film Corporation* v. *City of Chicago*, 355 U. S. 35 (1957); *Times Film Corporation* v. *City of Chicago*, N. D. Ill. 57 C 2017 (1957) (unreported); *Paramount Films* v. *City of Chicago*, 172 F. Supp. 69 (N. D. Ill. 1959); *Capitol Enterprises* v. *City of Chicago*, 260 F. 2d 670 (C. A. 7, 1958); and *Columbia Pictures Corp.* v. *City of Chicago*, N. D. Ill., 59 C 1058 (1959) (unreported).

Two cases have subsequently been decided. In *Excelsior Pictures Corp.* v. *City of Chicago*, 182 F. Supp. 400 (N. D. Ill., 1960), the court ordered the city to grant a license. In *Zenith International Film Corp.* v. *City of Chicago*, 183 F. Supp. 623 (N. D. Ill., 1960), the denial of a license was upheld. An appeal is pending. C. A. 7, No. 13008.

9. See memorandum of Miner, *D.J.*, and *Chicago Tribune*, July 9, 1959, part 4, p. 11, col. 2.

10. See note 8 *supra*. The litigious history of Chicago movie censorship commenced with the banning of "The James Boys." *Block* v. *City of Chicago*, 239 Ill. 251 (1909). In *United Artists Corp.* v. *Thompson*, 339 Ill. 595 (1930), the police censor board denied a license because the film portrayed illegal and brutal police practices. The Chicago censors have banned newsreel films of Chicago policemen shooting at labor pickets and ordered the deletion of a scene depicting the birth of a buffalo in Walt Disney's "Vanishing Prairie." Gavzer, *Who Censors Our Movies?*, *Chicago Magazine*, Feb., 1956, pp. 35, 39. Before World War II licenses were denied to a number of films portraying and criticizing life in Nazi Germany including the March of Time's "Inside Nazi Germany." Editorials, *Chicago Daily Times*, Jan. 20, Nov. 18, 1938.

A member of the Chicago censor board explained that she rejected a film because "it was immoral, corrupt, indecent, against my—against my (sic) religious principles * * *" Transcript of Record,

and those of other jurisdictions[11] to keep within constitutional bounds are familiar.

The lessons of history have thus been confirmed. In an effort to prevent exhibition of particular types of motion pictures, the city of Chicago has imposed a restraint which is forbidden by the Constitution. Here, as in *Smith* v. *California*, *supra*,

> "the ordinance in question, though aimed at obscene matter, has such a tendency to inhibit constitutionally protected expression that it cannot stand under the Constitution."

Times Film Corp. v. *City of Chicago*, 355 U. S. 35, *supra*, p. 172. Cf. *Burstyn* v. *Wilson*, *supra*. More recently, a police sergeant attached to the censor board explained, "Coarse language or anything that would be derogatory to the (U. S.) government—propaganda" is ruled out of foreign films. "Nothing pink or red is allowed," he added. *Chicago Daily News*, April 7, 1959, p. 3, col. 7-8. Cf. *DeJonge* v. *Oregon*, 299 U. S. 353 (1937). The police sergeant in charge of the censor unit has said: "Children should be allowed to see any movie that plays in Chicago. If a picture is objectionable for a child, it is objectionable period." *Chicago Tribune*, May 24, 1959, p. 8, col. 3. Cf. *Butler* v. *Michigan*, 352 U. S. 380 (1957).

11. See *Burstyn* v. *Wilson*, *supra*; *Gelling* v. *Texas*, 343 U. S. 960 (1952); *Commercial Pictures Corp.* v. *Board of Regents*, 346 U. S. 587 (1954); *Superior Pictures Corp.* v. *Department of Education*, 346 U. S. 587 (1954); *Holmby* v. *Vaughn*, 350 U. S. 870 (1955); *Times Film Corporation* v. *City of Chicago*, 355 U. S. 35 (1957). See also Kupferman and O'Brien, "Motion Picture Censorship—The Memphis Blues," 36 Cornell L. Q. 273 (1951).

CONCLUSION.

We respectfully submit that the judgment of the courts below should be reversed.

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APPENDIX A.

Relevant Portions of Municipal Code of Chicago

Chapter 155.

Motion Pictures.

Exhibition.

155-1. It shall be unlawful for any person to show or exhibit in a public place, or in a place where the public is admitted, anywhere in the city any picture or series of pictures of the classes or kinds commonly shown in mutoscopes, kinetoscopes, or cinematographs, and such pictures or series of pictures as are commonly shown or exhibited in so-called penny arcades, and in all other automatic or motion picture devices, whether an admission fee is charged or not, without first having secured a permit therefor from the commissioner of police.

It shall be unlawful for any person to lease or transfer, or otherwise put into circulation any motion picture plates, films, rolls, or other like articles or apparatus, from which a series of pictures for public exhibition can be produced, to any exhibitor of motion pictures, for the purpose of exhibition within the city, without first having secured a permit therefor from the commissioner of police.

The permit herein required shall be obtained for each and every picture or series of pictures exhibited and is in addition to any license or other imposition required by law or other provision of this code.

Any person exhibiting any pictures or series of pictures without a permit having been obtained therefor shall

be fined not less than fifty dollars nor more than one hundred dollars for each offense. A separate and distinct offense shall be regarded as having been committed for each day's exhibition of each picture or series of pictures without a permit. (Amend. Coun. J. 12-21-39, p. 1396).

155-4. Such permit shall be granted only after the motion picture film for which said permit is requested has been produced at the office of the commissioner of police for examination or censorship.

If a picture or series of pictures, for the showing or exhibition of which an application for a permit is made, is immoral or obscene, or portrays depravity, criminality, or lack of virtue of a class of citizens of any race, color, creed, or religion and exposes them to contempt, derision, or obloquy, or tends to produce a breach of the peace or riots, or purports to represent any hanging, lynching, or burning of a human being, it shall be the duty of the commissioner of police to refuse such permit; otherwise it shall be his duty to grant such permit.

In case the commissioner of police shall refuse to grant a permit as hereinbefore provided, the applicant for the same may appeal to the mayor. Such appeal shall be presented in the same manner as the original application to the commissioner of police. The action of the mayor on any application for a permit shall be final.

155-5. In all cases where a permit for the exhibition of a picture or series of pictures has been refused under the provisions of the preceding section because the same tends towards creating a harmful impression on the mind of children, where such tendency as to the minds of adults would not exist if exhibited only to persons of mature age,

the commissioner of police may grant a special permit limiting the exhibition of such picture or series of pictures to persons over the age of twenty-one years; provided, such picture or pictures are not of such character as to tend to create contempt or hatred for any class of law abiding citizens.

When such special permit has been issued, it shall be unlawful for any person exhibiting said picture to allow any persons under the age of twenty-one years to enter the place where same is being exhibited or to remain in said place while any part of said picture or series of pictures is being shown.